

Kelly A. Banducci  
625 Dimick St.  
Oregon City, OR 97045  
(503)650-9615

Plaintiff, Pro Se

CLERK US BANKRUPTCY COURT  
DISTRICT OF OREGON

'04 MAR 12 P2:30

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

*In re:*

MATTHEW SCOTT POULTON

Debtor.

KELLY A. BANDUCCI

Plaintiff,

vs.

MATTHEW SCOTT POULTON

Defendant.

Case No. 303-43612-elp7

Adv. Proc. No. 04-3088 elp

COMPLAINT OBJECTING TO  
DISCHARGE OF DEBT

[Fraud 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(2)(B)(iii), 11 U.S.C. § 523(a)(2)(B)(iv), 11 U.S.C. § 523(a)(3)(B), 11 U.S.C. § 523(a)(3)(B)(4), 11 U.S.C. § 523(a)(3)(B)(5), 11 U.S.C. § 523(a)(6), 11 U.S.C. § 523(a)(15)(B) and 11 U.S.C. § 523(a)(2)(C)(1), 11 U.S.C. § 727(a)(2)(A), 11 U.S.C. § 727(a)(4)(A), 11 U.S.C. § 727(a)(4)(B), 11 U.S.C. § 727(a)(4)(c), 11 U.S.C. § 727(a)(5), 11 U.S.C. § 727(d)(3)]

**PLAINTIFF alleges:**

1. This is an adversarial proceeding under Bankruptcy Rule 7001 in which plaintiff seeks a determination of nondischargeability of plaintiff's debt pursuant to 11 U.S.C. §

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1 523(a)(2)(A), 11 U.S.C. § 523(a)(2)(B)(iii), 11 U.S.C. § 523(a)(2)(B)(iv), 11 U.S.C. §  
2 523(a)(3)(B), 11 U.S.C. § 523(a)(3)(B)(4), 11 U.S.C. § 523(a)(3)(B)(5), 11 U.S.C. §  
3 523(a)(6), 11 U.S.C. § 523(a)(15)(B) and 11 U.S.C. § 523(a)(2)(C)(1).  
4

5 2. This Court has jurisdiction under this core proceeding under 28 U.S.C §157  
6 (b)(2)(I) and 28 U.S.C §1334.

7 3. On **December 8, 2003**, Defendant filed a voluntarily petition under Chapter 7 of  
8 of the Bankruptcy Code and an Order for relief was filed. Plaintiff and Defendant cohabitated  
9 in the State of Oregon as domestic partners from August 31, 2001 to July 24, 2003 in  
10 Plaintiff's home.

11 4. Plaintiff is a creditor of Defendant by virtue of having loaned Defendant  
12 substantial sums of monies on multiple occasions between July 2000 to July 2003 for  
13 Defendant's legal expenses, Attorney fees, Guardian ad Litem fees, travel and lodging  
14 expenses, witness fees, legal service messenger fees, and travel and entertainment expenses of  
15 Defendant's children associated with Defendant's recent Spokane County Superior Court  
16 Washington State child custody case. Plaintiff also loan Defendant monies to satisfy his Utah  
17 Court ordered support obligations associated with the medical care, mental health care,  
18 educational expenses of Defendant's children during this same two year period. Plaintiff  
19 provided over 50% of Defendant's financial support, care and housing from  
20 September 26, 2001 through July 15, of 2002 during a significant period of Defendant's  
21 unemployment. Additional loans were made by Plaintiff to Defendant for major  
22 vehicle repairs of Defendant's car. The outstanding balance owed to Plaintiff by Debtor was

23 *Page 2 of 8 – COMPLAINT*  
24

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1 \$48,668.00.00 on the date of the bankruptcy filing.

2 5. In February of 2003 Defendant incurred a \$3,000 gambling  
3 debt which Plaintiff borrowed money from Plaintiff's mother to reimburse the household fund.

4 6. During the months of May, June and July of 2003 Defendant began stealing  
5 significant sums of money from Plaintiff's personal bank accounts via Plaintiff's ATM bank  
6 cards without the consent or knowledge of Plaintiff. During these same months, Defendant  
7 also committed fraud and theft through the unauthorized use of Plaintiff's Chevron gas card.

8 7. On July 22, 2003, Plaintiff demanded Defendant move out of her residence.  
9 Defendant then committed a personal battery on Plaintiff's person which was witnessed by  
10 Plaintiff's eleven year old daughter and demanded \$900.00 to vacate Plaintiff's home.  
11 Physically injured and under duress Plaintiff wrote Defendant a personal check payable to  
12 Defendant but Defendant did not immediately leave the premises as agreed. On July 23, 2003  
13 Plaintiff placed a stop order on the check.

14 8. On July 24, 2003 Defendant and five members of Defendant's current  
15 roommate's household came to Plaintiff's home while Plaintiff's daughter was home alone and  
16 Plaintiff was at work 30 miles away. Plaintiff's daughter called the police stating that she was  
17 scared and didn't want Defendant and others in the home while her mother was not there.  
18 Defendant then began physically moving out of Plaintiff's home taking his belongings in  
19 addition to several of Plaintiff's belongings, i.e., one 32" Toshiba Color TV w/remote, one  
20 Twin size captain's bed with pedestal, box spring and mattress, craftsman tool set, vise-grip  
21 tool set, one Stanley 3-50' power cords and one power cord caddy. These intentional and

1 malicious actions by Defendant against Plaintiff, coupled with Defendant's  
2 physical assault on Plaintiff's person and witnessed by Plaintiff's daughter caused significant  
3 mental and psychological damage to both Plaintiff and Plaintiff's daughter requiring long term  
4 counseling which both continue treatment for today. Defendant should therefore be held  
5 responsible for all mental health and medication expenses incurred by Plaintiff for treatment of  
6 Plaintiff and Plaintiff's minor child.

7 9. On February 27, 2004 Defendant walked into the Tigard, Oregon branch of  
8 Washington Mutual Bank and cashed the aforementioned check for \$900.00 cash. The stop  
9 payment order Plaintiff had placed on the check had a 6 month expiration date. Once again,  
10 Defendant through his own intentional and malicious actions caused harm to Plaintiff by  
11 stealing from Plaintiff's bank account. However, Defendant admits owing \$15,000 to Plaintiff  
12 by listing Plaintiff on the list of creditors but failed to list this check in Defendant's possession  
13 since July 22, 2003 as a personal asset within Defendant's Chapter 7 Bankruptcy Petition.

14 10. Plaintiff earns \$12,000 less per year than Defendant and Plaintiff has consistently  
15 and continually made monthly payments including interest accruing monthly in repayment of  
16 debts of the Defendant borrowed by Defendant from Plaintiff's credit lines.

17 11. Plaintiff justifiably relied upon Defendant's representations to Plaintiff during the  
18 two years of cohabitation together that, by sporadic payments and re-borrowing by the  
19 Defendant from the Plaintiff credit lines, Defendant's continual reference of Plaintiff to the  
20 general public and the Courts as his "fiancée", Defendant would repay all amounts utilized in  
21 accordance with the terms and conditions agreed to between Plaintiff and Defendant until fully  
22 repaid.

- 1           12.    By **June 1, 2001**, Defendant's account balance was **\$0**.
- 2           13.    By **September 1, 2001** Defendant's account balance was **\$386.00**.
- 3           14.    By **October 15, 2001** Defendant's account balance was **\$4,686.00**.
- 4           15.    By **November 30, 2001** Defendant's account balance was **\$10,686.00**.
- 5           16.    By **December 31, 2001** Defendant's account balance was **\$18,686.00**.
- 6           17.    By **January 31, 2002** Defendant's account balance was **\$19,186.00**.
- 7           18.    By **February 27, 2002** Defendant's account balance was **\$16,186.00**.
- 8           19.    By **March 31, 2002** Defendant's account balance was **\$16,986.00**.
- 9           20.    By **April 30, 2002** Defendant's account balance was **\$19,116.00**.
- 10          21.    By **May 31, 2002**, Defendant's account balance was **\$19,966.00**.
- 11          22.    By **June 30, 2002** Defendant's account balance was **\$23,966.00**.
- 12          23.    By **July 31, 2002** Defendant's account balance was **\$24,766.00**.
- 13          24.    By **August 31, 2002** Defendant's account balance was **\$26,516.00**.
- 14          25.    By **September 30, 2002** Defendant's account balance was **\$26,516.00**.
- 15          26.    By **October 31, 2002** Defendant's account balance was **\$29,516.00**.
- 16          27.    By **November 30, 2002** Defendant's account balance was **\$30,116.00**.
- 17          28.    By **December 31, 2002** Defendant's account balance was **\$31, 116.00**.
- 18          29.    By **January 31, 2003** Defendant's account balance was **\$32, 116.00**.
- 19          30.    By **February 28, 2003** Defendant's account balance was **\$35,116.00**.
- 20          31.    By **March 31, 2003** Defendant's account balance was **\$38,616.00**.



1 thought coercions of Plaintiff to obtain said loans.

2 48. Plaintiff, in fact, did reasonably rely upon Defendant's misrepresentations of  
3 Repayment and continual coercions and was induced to lend money to Defendant by said  
4 misrepresentations and coercions.

5 49. Defendant did not claim the afore-mentioned monies as taxable income on  
6 Defendant's tax returns for tax years 2000 through 2003. However, although not entitled to  
7 the Educational Hope Credit, Defendant did claim this credit for tax year 2003 for  
8 educational expenses paid not by the Defendant but by the Plaintiff on behalf of Defendant's  
9 minor son.

10 50. Plaintiff attended the Meeting of Creditor's and after review of Defendant's  
11 sworn statements and schedules filed, brought several sub abuses outlined in written format to  
12 the attention of the Trustee, Mr. Robert Morrow appointed in the Defendant's related Chapter  
13 7 bankruptcy case. Mr. Morrow then conferred with Ms. Poppel of the U.S. Trustee's office.  
14 As of the filing of this complaint the information provided by Plaintiff to the Trustee  
15 continues to be reviewed pending possible further action by the U.S. Trustee.

16 51. As a result of Defendant's actions, which actions amount to actual fraud, Plaintiff  
17 has thereby sustained substantial loss and damages.

18 52. Due to Defendant's actions, it was necessary for the Plaintiff to seek legal  
19 advice on the filing of this complaint for which the Plaintiff has incurred costs and expenses,  
20 including attorney's fees, legal research fees and filing fees, which the Defendant is obligated  
21 to pay. Plaintiff incurs monthly interest expenses on the balances that remain on

1 Plaintiff's credit lines borrowed on behalf of the Defendant, which the Defendant is also  
2 obligated to pay.

3 53. By reason of the foregoing, Defendant obtained money from Plaintiff through  
4 false pretense, false representation, coercion and/or actual fraud.

5 **WHEREFORE**, Plaintiff prays for a judgment against Defendant, and in favor to the  
6 Plaintiff as follows:

- 7 1. Declaring that the debt to Plaintiff is nondischargable.
- 8 2. A money judgment in the amount of \$49,608.00.
- 9 3. Declaring that all personal property belonging to Plaintiff and stolen from  
10 Plaintiff's home by Defendant be returned in good condition.
- 11 4. For Plaintiff's reasonable attorney's fees, costs and disbursements incurred  
12 herein;
- 13 5. For such other and further relief the Court deems just and proper.

14 DATED this 2<sup>nd</sup> day of March, 2004.

15 By Kelly A. Banducci  
16 KELLY A. BANDUCCI, Pro Se



B 104 (Rev. 2/92)	<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only) <div style="text-align: right; font-size: 1.2em;">04-3088-elp</div>
<b>PLAINTIFFS</b> KELLY A. BANDUCCI		<b>DEFENDANTS</b> MATTHEW SCOTT POWLTON <div style="text-align: right; font-size: 0.8em;">CLERK US BANKRUPTCY COURT DISTRICT COURT OF OREGON</div>
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) KELLY A. BANDUCCI, PRO SE 625 DIMICK ST OREGON CITY, OR 97045 503 650-9615		<b>ATTORNEYS</b> (If Known) GEORGE HOSELTON 19230 MCCOUGHLIN BLVD GLANDSTONE, OR 97027 503 650 2422 <div style="text-align: right;">04 MAR 12 P2:30 LODGED _____ REC'D <u>CS</u> PAID _____ DOCKETED _____</div>
<b>PARTY</b> (Check one box only) <input type="checkbox"/> 1. U.S. PLAINTIFF <input type="checkbox"/> 2. U.S. DEFENDANT <input checked="" type="checkbox"/> 3. U.S. NOT A PARTY		
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) TO OBTAIN DECLARATORY JUDGMENT PER 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(2)(B)(i), 11 U.S.C. § 523(a)(3)(B)(iv), 11 U.S.C. § 523(a)(3)(B)(v), 11 U.S.C. § 523(a)(3)(B)(vi), 11 U.S.C. § 523(a)(3)(B)(vii), 11 U.S.C. § 523(a)(6), 11 U.S.C. § 523(a)(15)(B), 11 U.S.C. § 523(a)(2)(C)(i), 11 U.S.C. § 727(a)(2)(A), 11 U.S.C. § 727(a)(4)(A), 11 U.S.C. § 727(a)(4)(B), (Check the one most appropriate box only) 11 U.S.C. § 727(a)(4)(c), 11 U.S.C. § 727(a)(5), 11 U.S.C. § 727(d)(3).		
<input type="checkbox"/> <b>454</b> To Recover Money or Property <input type="checkbox"/> <b>455</b> To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input checked="" type="checkbox"/> <b>456</b> To obtain a declaratory judgment relating to any of foregoing causes of action		
<input type="checkbox"/> <b>435</b> To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> <b>426</b> To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> <b>459</b> To determine a claim or cause of action removed to a bankruptcy court		
<input type="checkbox"/> <b>458</b> To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> <b>434</b> To obtain an injunction or other equitable relief <input type="checkbox"/> <b>498</b> Other (specify)		
<input type="checkbox"/> <b>424</b> To object or to revoke a discharge 11 U.S.C. § 727 <input type="checkbox"/> <b>457</b> To subordinate any allowed claim or interest except where such subordination is provided in a plan		
<b>ORIGIN OF PROCEEDINGS</b> (Check one box only) <input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 4. Reinstated or Reopened <input type="checkbox"/> 5. Transferred from Another Bankruptcy Court <input type="checkbox"/> Check if class action under F.R.C.P. 23		
<b>DEMAND</b>	NEAREST THOUSAND \$50	OTHER RELIEF SOUGHT Return of Personal Property <input type="checkbox"/> <b>JURY DEMAND</b>
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>		
<b>NAME OF DEBTOR</b> MATTHEW SCOTT POWLTON		<b>BANKRUPTCY CASE NO.</b> 303-43612-elp7
<b>DISTRICT IN WHICH CASE IS PENDING</b> Oregon	<b>DIVISIONAL OFFICE</b> Portland	<b>NAME OF JUDGE</b> ELIZABETH PERRIS
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>		
<b>PLAINTIFF</b>	<b>DEFENDANT</b>	<b>ADVERSARY PROCEEDING NO.</b>
<b>DISTRICT</b>	<b>DIVISIONAL OFFICE</b>	<b>NAME OF JUDGE</b>
<b>FILING FEE</b> (Check one box only) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE DEFERRED		
<b>DATE</b> 3-12-04	<b>PRINT NAME</b> KELLY A. BANDUCCI	<b>SIGNATURE OF ATTORNEY (OR PLAINTIFF)</b> <i>Kelly A. Banducci</i>